



EXHIBIT 1

DATE 2/16/2011

HB 504

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Montana Legislative Services Division
Office of Research and Policy Analysis

January 14, 2011

Representative Yates,

Attached is a copy of the bill draft, LC 2019, that you requested to revise the Major Facility Siting Act. As you requested, I also have sent Commissioner Brad Molnar a copy of the draft.

The draft requires a person issued a certificate to build a transmission line that exports at least 50% of its contracted power to out-of-state markets to reimburse both property owners who own land over which the line passes (in addition to right-of-way agreements or options) and to compensate property owners who feel their property is devalued by the transmission line but do not own property over which the line passes.

As your non-partisan staff, before proceeding with the draft, I need to bring to your attention a couple issues in the language you provided that may be flagged during legal review of the bill.

A remedy for adjoining landowners is already available under a theory of inverse condemnation if an adequate showing can be met. The draft provides an additional and different avenue for compensation. The draft also may violate the interstate commerce clause. It could be argued that the draft places an "undue burden" on interstate commerce because the bill only applies to interstate transmission. A similar argument could be made concerning equal protection under the Constitution.

If you'd like to proceed with the bill as drafted, these issues may be flagged during legal review of the bill draft. That doesn't mean the bill can't proceed as drafted; however, the concerns would be noted in the information filed with the bill draft and may be raised during a hearing on the bill.

Using the attached form, let me whether you'd like to proceed with the bill, based on the language you provided, place the bill on hold, or if you have changes you'd like me to make in the language you provided. I look forward to working with you.

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